

The Generic Policy Development Process

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Introduction

1. The GPDP is a tool that seeks to improve the quality of regulatory interventions by defining an explicit generic process for sound regulatory development. This explicit process provides the necessary checks and balances that help ensure that if regulation is necessary, then it is effective and efficient in operation. The GPDP requires policy advisers to treat regulations as only one of a set of alternative policy instruments. However, it acknowledges that in some areas, like taxation, regulatory intervention is the only means of achieving the policy objective. In this way the GPDP is part of a strategy of measures that mitigate against the risks of the detrimental effects resulting from poor quality regulatory interventions.

2. The GPDP does not impose any new requirements on policy agencies. What it does is formalise a process that captures all the existing requirements that are defined in various places, such as the Cabinet Office Manual.

3. This paper provides detail on the GPDP. It provides a broad overview of the GPDP followed by a discussion of its five separate stages.

Origin and Objectives of the GPDP

4. The GPDP is based on the Generic Tax Policy Process (GTPP)¹ currently used by the Inland Revenue Department and the Treasury in formulating tax policy. The GPDP's five stages (i.e. strategic, tactical, operational, legislative and implementation and review) mirror the key stages of the GTPP. The GPDP is illustrated in diagram 1.

5. The GPDP has five objectives, which are to:

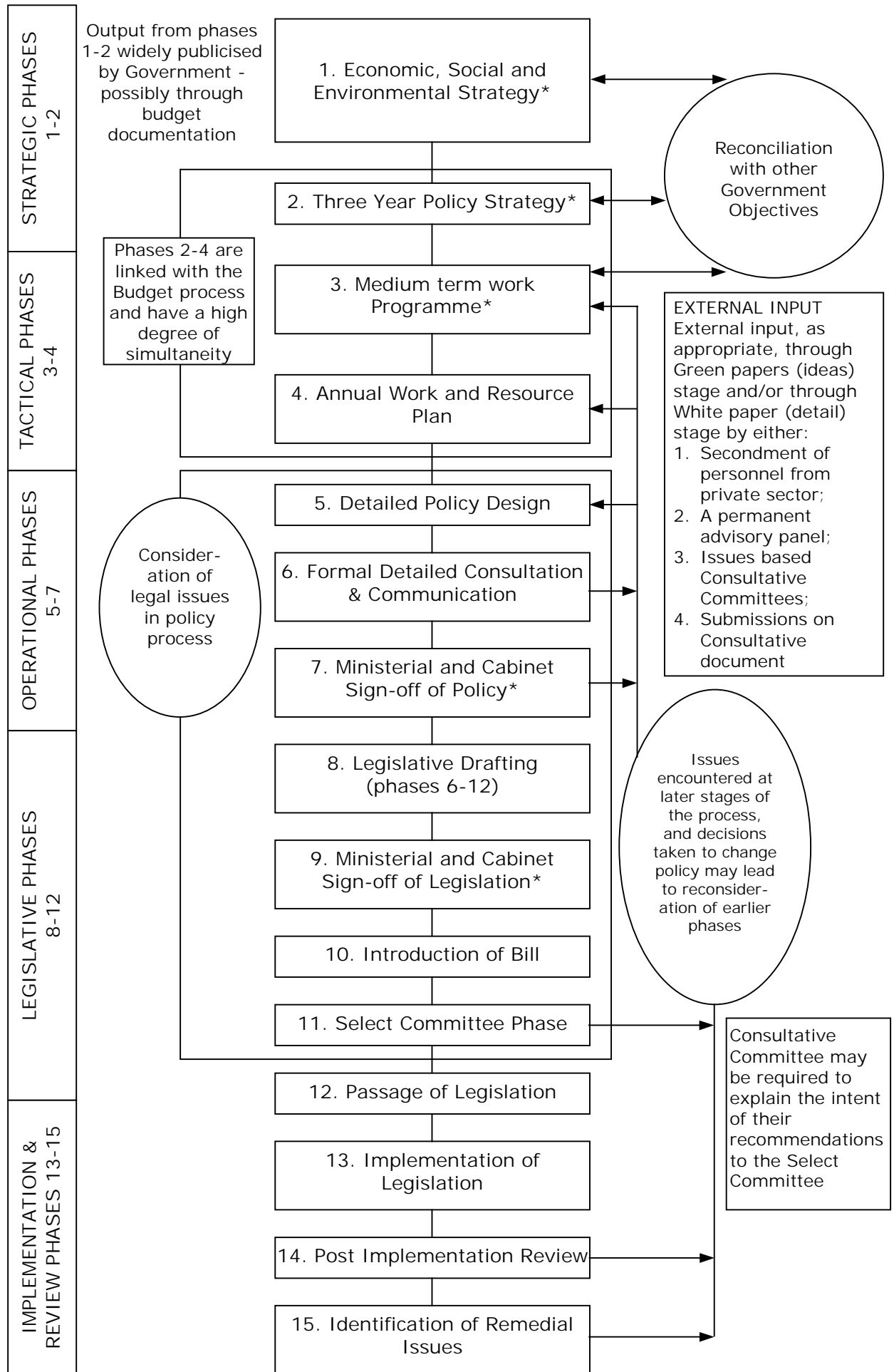
- provide transparency at every stage of the policy development process;
- encourage earlier, explicit consideration of key policy elements and trade-offs²;
- clarify the responsibilities of participants and accountabilities of policy agencies;
- provide opportunities for substantial external input into policy advice and the review of its effect; and
- formalise a process of interaction between public and private sector participants in the policy process.

6. In achieving these objectives, the GPDP provides policy agencies with a guide to the best practice procedures that should occur at each of the different stages of regulatory development to increase the overall quality of regulatory interventions. At the same time the GPDP, by formalising the opportunities for stakeholder input, defines the rights stakeholders have in regulatory development and review.

¹ It is assumed that the GTPP would continue to be used for tax policy as it is consistent with the GPDP.

² This is achieved through linking its first three stages.

Diagram 1 - The Generic Policy Development Process



* Cabinet Decision

The Need for a GPDP

7. The need for an explicit generic process was identified by officials³ in their examination of the existing policy and regulatory development processes. In that examination it was found that the current processes tend to be associated with:

- inadequate problem identification and a failure to identify the significant impacts of current and proposed regulation;
- effective consultation as a best-practice not being consistently carried out;
- quality assurance processes that only apply to the latter stages of the policy development;
- no single comprehensive quality standard, or policy process, applying across the public sector;
- a lack of legal advice early in the policy development process, including advice on the fit with the existing body of law; and
- departments giving a low priority to the ongoing monitoring of the impacts of regulation in a changing economic and social environment.

How the GPDP Works

8. Like the GTPP, the GPDP breaks down a policy initiative into its key developmental stages ranging from its conceptual inception through to reviewing its effect. It then applies different requirements to each stage. This breakdown is cognisant of the fact that at each separate stage:

- there are different outputs;
- decision makers require different levels of information;
- policy agencies have different responsibilities; and
- different types of non-government participation are required.

9. The GPDP does not impose new standards on policy agencies. Rather it formalises a process that refers to the existing standards. These standards include those that are in the Cabinet Office Manual, in the Standing Orders of the House and in guidelines such as: *The Full Picture: Guidelines for Gender Analysis*⁴.

10. Having an explicit process is key to improving the quality of regulations. With an explicit process all participants know the standards that must be met, at each stage of the process, before a regulation can be imposed. For example, the GPDP informs non-government participants of when they should expect to be consulted and the level of

³ From "Quality of Regulatory Interventions Review", CSP (97) 190, pg. 3.

⁴ *The Full Picture: Guidelines for Gender Analysis*, Ministry of Women's Affairs, 1996.

that consultation. This knowledge enables such stakeholders to judge the effectiveness of specific processes policy agencies employ to meet those requirements. This places incentives on policy agencies to ensure such processes are effective and efficient.

11. In this sense the GPDP is permissive. Its intent is to specify the types of processes that a policy initiative should pass through to increase the likelihood of a good outcome. However, it does not specify the detail of those processes. For instance, the GPDP requires the application of monitoring and evaluation processes but it does not dictate what those processes should be. This level of detail is left to policy agencies to develop cost-effective ways of complying with the GPDP by developing, or building on, their own departmental processes.

12. The Government's intention is for the GPDP to be used as a quality assurance tool in the policy advice process. It is designed to be used across all policy developments. The GPDP will be formally applied to particular policy areas where the likelihood of poor regulation imposing significant costs is high. Outside of these areas, the GPDP serves as a quality assurance tool for policy agencies to use as they see fit.

13. It is not intended that the GPDP would be enforceable in a court of law.

14. Finally, the GPDP is described as a sequential process with defined end points to each stage. However, it is recognised that in practice many stages will be linked in time and will occur simultaneously. This partially reflects the fact that the policy development process itself is not linear, it is typically iterative.

Key Standards of the GPDP

15. Throughout the GPDP certain key standards are emphasised. These are that:

- the nature, scale and source of the problem are identified;
- proposals for government action are made only where assessment of the market, the legal system and other relevant institutions, to resolve the problem, indicate a failure;
- the alternatives to regulation are fully considered before regulatory action is proposed;
- there is an evaluation of the costs and benefits of the proposal;
- there is early and on-going consideration of the legal implications of proposed policy. In particular ensuring that the existing body of law is fully taken into account in developing new law;
- there is early and on-going consideration of the international implications of the proposed policy;
- detailed work programmes are developed which set out work plans for the development and implementation of policy initiatives; and
- there is effective consultation with stakeholders and the involvement of non-governmental experts.

16. The GPDP emphasises these standards as experience across the public sector⁵ suggests that they contribute significantly to good policy outcomes.

Strategic Stage

17. The strategic stage of the GPDP commences at the level of an agency's strategic planning activity. That is, the stage where agencies are determining what their contribution to the goals of the Government will be over the medium term. Strategic planning guides the direction of all policy initiatives subsequently progressed by an agency. Applying the GPDP at this point allows there to be increased transparency, and an early and explicit consideration of the key policy elements and trade offs.

18. Within a policy advice context, strategic planning tends to encompass four broad activities, which are:

- An assessment of the goals of the Government. This assessment encompasses consideration of the relevant medium to longer term strategies, for example Environment 2010. It also includes providing advice to the Government on what the goals could be.
- Identification of the core problems or issues, that prevent or limit, the achievement of those goals.
- The development of key strategies to respond to those problems or limits.
- A broad sequencing of those key strategies over time.

19. To clarify what is meant by a "key strategy" consider the following examples.

Example 1

20. The Government has a goal of *reinforcing a successful enterprise economy (SRA 2) through policies which:*

- *encourage businesses to develop a stronger capacity to adapt successfully to changing conditions;*
- *reward work and innovation, and promote knowledge and learning in enterprises;*
- *maintain and enhance open competitive markets with an efficient flow of goods, services and capital;*
- *promote the efficient use of resources in the economy.*

21. A key strategy to progress SRA 2 could be to ensure that a particular industry group (e.g. the manufacturing sector) meets the full costs of its operations to encourage a more efficient allocation of resources.

⁵ CSP (97) 190, pg. 9

Example 2

22. The Government has a goal of *enhancing the ability of individuals, families and communities to actively participate in New Zealand's economic, social and cultural development (SRA 5) through co-ordinated policies and delivery approaches that:*

- *address causes of poor outcomes for individuals and families;*
- *foster community participation;*

are based on principles of respect, compassion and responsibility.

23. A key strategy to progress SRA 5 could be to minimise the barriers to labour market participation.

24. The process of strategic planning is already a core component of the operation of policy agencies. Within this framework the GPDP identifies a number of standards for policy agencies in developing their key policy strategies. Following the broad strategic planning activities, these are as follows.

Problem Identification

- The desired outcome, or policy objective is defined.
- A problem, or issues, identification is conducted at a broad level. This includes a broad analysis of the distributional impact of the problem on the different groups within society⁶ and/or the different sectors within the economy.
- The problem, or issues, identification is informed by the views of key stakeholders.
- Input is provided by a key agency, or a cluster of key agencies, contributing to the same SRA.

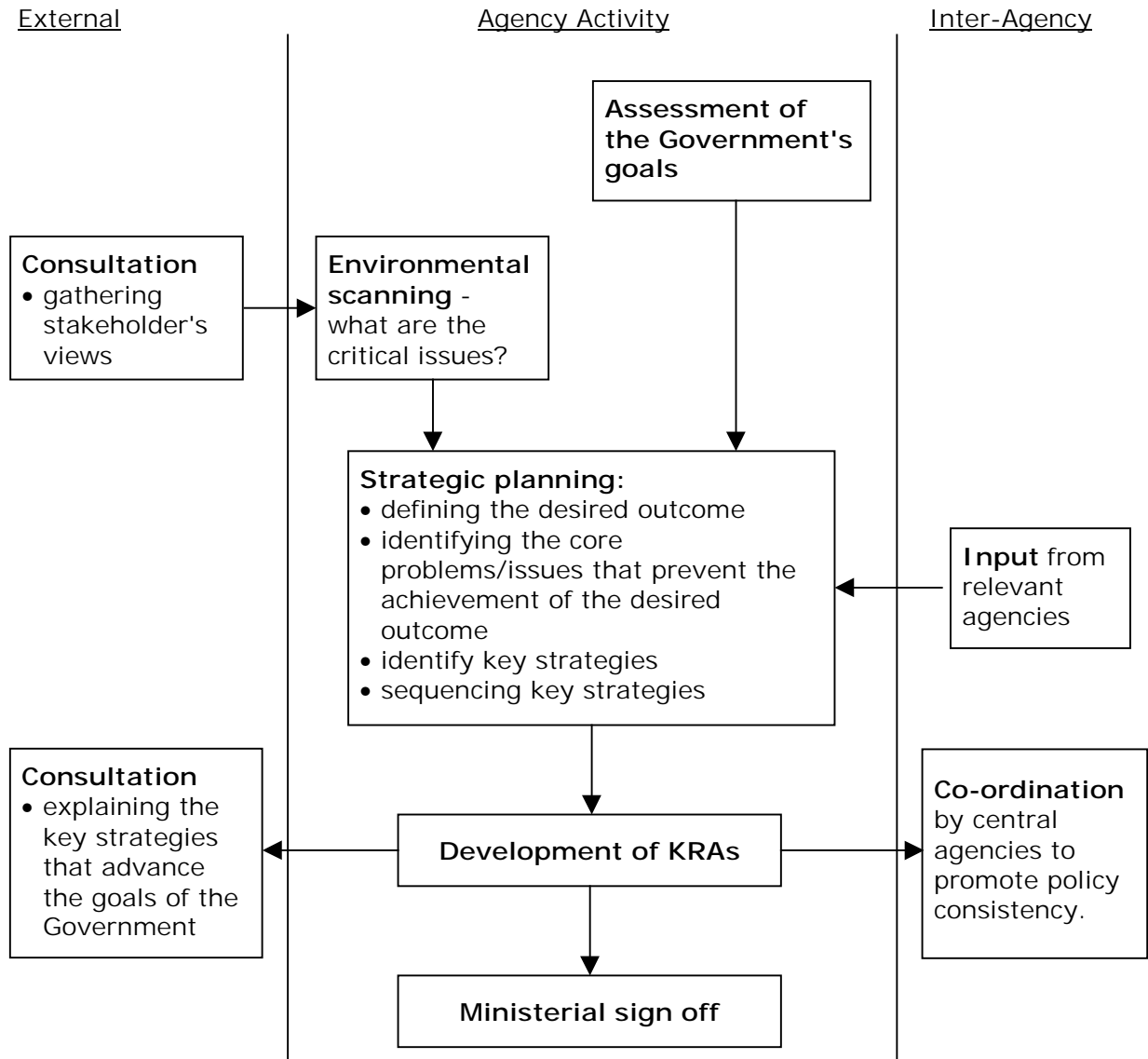
Development of Key Strategies and Sequencing

- Decisions regarding the key strategies are informed by a broad cost/benefit analysis, and consideration of the legal and international implications.
- Input is provided by a key agency, or a cluster of key agencies, contributing to the same SRA.
- Stakeholders are informed of the strategic direction.
- Central agencies co-ordinate KRAs and promote policy consistency.

25. To illustrate what occurs at the strategic stage the inter-linkages between an agency's strategic planning activity and the GPDP are illustrated in diagram 2.

⁶ A quality process for inclusion of gender analysis is provided in *The Full Picture: Guidelines for Gender Analysis*.

Diagram 2 - The Strategic Stage of the GDP



Checklist for the Strategic Stage

- The desired outcome, or policy objective, has been defined.
- The core problems or issues that prevent the fulfilment of the desired outcome, or policy objective, are clearly identified.
- The impact that the problem or issue has on different groups in society or on different sectors of the economy has been analysed at a broad level⁷.
- Strategic planning has been informed by the views of key stakeholders e.g. key sector leaders.
- There has been a broad consideration of the key strategies:
 - likely social, environmental and economic costs and benefits;
 - international implications; and
 - legal implications.
- There has been an assessment of any Treaty of Waitangi issues.
- Other key policy agencies with a strategic interest have provided input into the strategic direction.
- Ministerial agreement to the strategic direction has been secured.
- Stakeholders have been informed of the Government's goals and the agency's strategic direction to achieve those goals.

Tactical Stage

26. The tactical stage, illustrated in diagram 3, concerns that part of the policy development process whereby policy initiatives are formulated to achieve the key strategies. The emphasis of the tactical stage is deciding how the key strategies are to be achieved. For instance, deciding between the options of assigning property rights to resource users, or implementing a more prescriptive regulatory environment that dictates how the resource is to be used.

27. To illustrate the difference between a key strategy and a policy initiative, consider the examples 1 and 2 from the strategic stage. In example one the key strategy to progress SRA 2 was to ensure that a particular industry group (e.g. the manufacturing sector) meets the full costs of its operations so as to encourage a more efficient allocation of resources. During the tactical stage policy initiatives to achieve this strategy could include:

- introducing a cost recovery regime for any government services;

⁷ Reference has been made to *The Full Picture* if appropriate.

- removing any forms of taxation subsidies received by the industry; and
- removing any forms of trade assistance received by the industry.

28. In example 2, the key strategy to advance SRA 5 is to minimise the barriers to labour market participation. Policy initiatives to achieve this strategy could include:

- training programmes designed for different groups of job seekers;
- subsidisation of child care and out of school care; and
- targeted careers information and guidance services.

29. Alongside the selection of the most appropriate policy initiatives, decisions are required at the tactical stage on the order in which initiatives will be progressed by an agency. These decisions then need to be reflected in the prioritisation and allocation of an agency's resources. This includes the development of policy work programmes both on an annual basis, and over the medium term (i.e. three years), and the corresponding resource plans.

30. The standards that the GDP emphasises during the tactical stage of policy development are as follows.

Policy Development

- The nature, scale and source of the problem are clearly identified. This includes an identification of the equity and distributional issues associated with the problem.
- The development and choice between different policy initiatives is informed by a consideration of:
 - the alternatives to regulation. Examples of such alternatives include voluntary codes of practice, the provision of information, or the establishment of property rights;
 - the various costs and benefits (with initiatives likely to impose a net cost discarded);
 - the legal implications - including how the initiative would fit with the existing body of law;
 - the international implications, especially the need to reflect any international obligations into government policy and/or law; and
 - the equity and distributional impact of the initiative on different groups within society, or on different sectors of the economy.
- Policy development has been guided by the principles of the Code of Good Regulatory Practice (attached in Appendix 1) where appropriate.
- Where more than one agency is responsible, or has an interest in the regulatory regime, policy initiatives be developed with reference to all the relevant agencies.

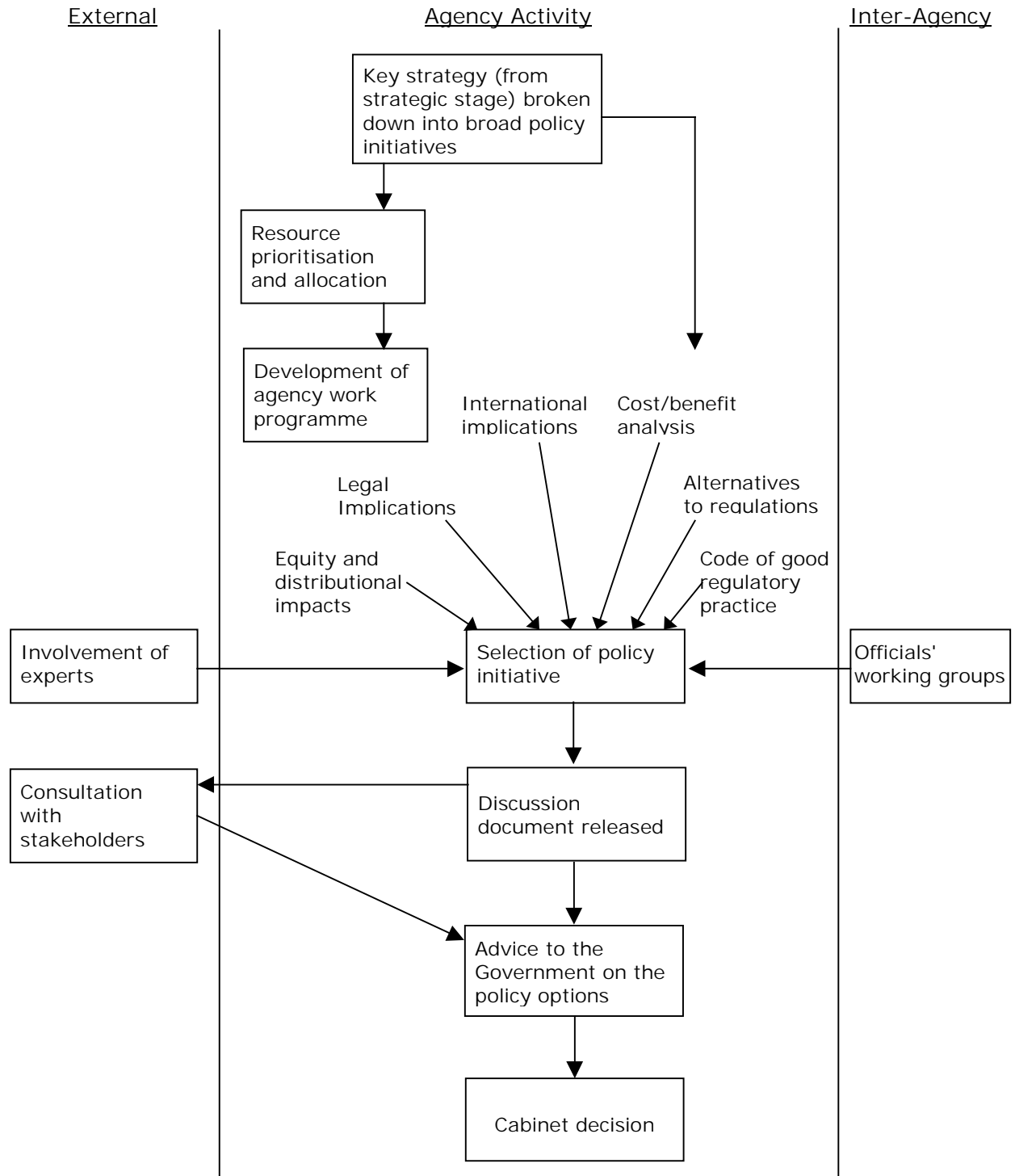
This could be achieved by the lead agency forming officials working groups to progress policy development.

- An appropriate level of external input from experts. This could occur in a number of ways, for instance through the formation of task forces, or through reference to a “stakeholders” advisory group.
- Effective consultation with stakeholders, possibly through the release of discussion documents.
- Ministerial/Cabinet sign off of the policy initiative.

Resource Allocation and Prioritisation

- The allocation of resources within the agency reflects the priorities decided at the strategic and tactical stages.
- Ministerial agreement to the work programme has been secured.
- Stakeholders are informed of the priorities.

Diagram 3 - The Tactical Stage of the GPDP



Checklist for the Tactical Stage

- The nature, scale and source of the problem is clearly understood. This includes understanding the distributional impacts that the problem has on different groups within society or on different sectors of the economy.
- There has been an assessment of the potential of the market, the legal system and other relevant institutions to resolve the problem.
- Government action is required and it is likely to be effective.
- Selection of the policy initiatives has been informed by an analysis of the:
 - alternatives to regulatory mechanisms;
 - costs and benefits;
 - international implications;
 - legal implications; and
 - equity and distributional impact of the initiative on different groups within society or on different sectors of the economy.
- Any Treaty of Waitangi implications have been identified and advised on.
- Advice is provided on the financial implications of the proposal.
- Other policy agencies with an interest in the initiative been involved in its development.
- There has been input from external experts if necessary.
- Stakeholders have been consulted on the policy options.
- Ministerial agreement has been secured.
- The priorities determined during the strategic and tactical stages are adequately reflected in work programmes and resource plans.
- Stakeholders are aware of these priorities.

Operational Stage

31. The operational stage of the GPDP concerns the detailed policy design. It incorporates formal consultation on, and Cabinet approval of, the detail of policy initiatives. The results of this stage should be final policy specifications sufficient for implementation. The operational stage is illustrated in diagram 4.

32. To clarify what is meant by detailed policy design, taking example 1 used in the previous sections, if the policy initiative selected is to introduce a system of cost recovery, the detail policy that will require analysis may include advice on:

- how the costs are to apportioned between users;
- the frequency of invoicing; and
- a system of debt recovery.

33. For example 2, if the policy initiative selected is targetted career information and guidance services, the detail policy may include:

- assessing the level of service required for the target groups;
- identifying the most efficient and effective means of providing service delivery; and
- advising on the appropriate accountability structures for service delivery.

34. The standards of the GPDP for the operational stage reflect some of the standards identified in the tactical stage. However, differences occur in their fulfilment. This reflects the conceptual/developmental nature of the tactical stage, versus the technical nature of the operational stage.

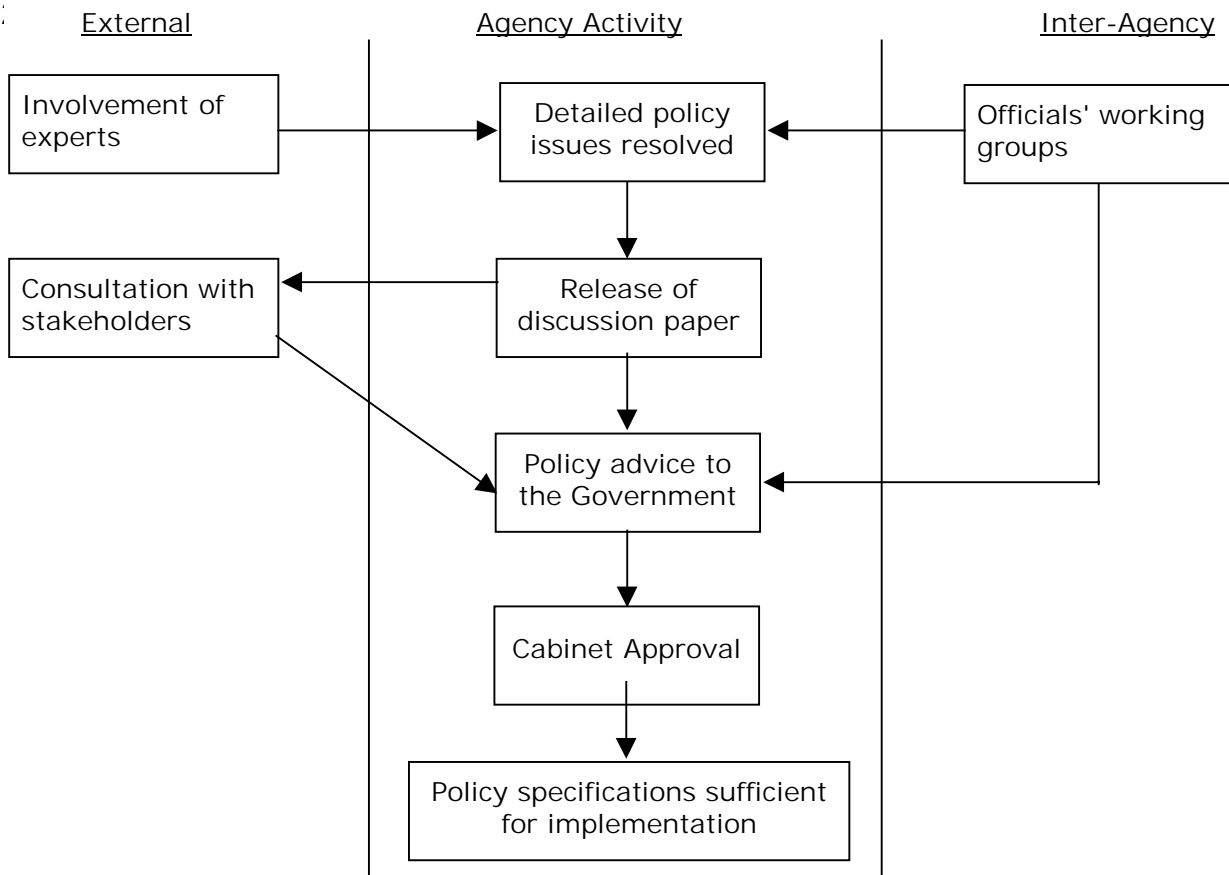
35. For example, experts involved at the tactical stage are more likely to be skilled in conceptual thinking and framework design. Whereas the experts involved at the operational stage may be more focused on technical specifics, for instance contract design.

36. Another key difference is the level of consultation with stakeholders. At the tactical stage this will include the release of discussion documents outlining policy options. Whereas at the operational stage consultation will concern the detail design of the policy option selected during the tactical stage.

Checklist for the Operational Stage

- All legal implications and the international obligations have been addressed.
- All Treaty of Waitangi implications have been addressed.
- External experts have been involved in the detailed policy design.
- The Code of Good Regulatory Practice has been applied.
- An assessment of the operational impacts, such as the costs to the department, has been made.
- All financial implications have been addressed and the appropriate approvals sought.
- The views of stakeholders were obtained and have been reflected in the recommendation to the Government.

Diagram 4 - The Operational Stage of the GDP



Legislative Stage

37. The legislative stage of the GDP is where policy is codified into legislation and its standards are the same as the current processes. These quality standards are specified in:

- Chapter 5 of the *Cabinet Office Manual*;
- *Legislative Change: Guidelines on Process and Content* (1991);
- the *Standing Orders of the House of Representatives*; and
- *Public Servants and Select Committees - Guidelines* (June 1996).

38. The legislative stage is illustrated in phases 8-12 of diagram 1. It should be noted that phases 8-12 illustrate the process for Bills. Regulations and other legal instruments follow a different process specified in sections 5.48-5.75 of the *Cabinet Office Manual*.

39. Prior stages of the GDP will mean that the legislative stage is likely to progress with greater ease. This will be due to the thorough consideration of policy against the Government's strategic objectives, and the more informed advice given to the Government through the formalised opportunities for external input.

Checklist for the Legislative Stage

- All the requirements of Chapter 5 of the Cabinet Office Manual have been complied with.
- The drafting of legislation is consistent with the Legislation Advisory Committee report: *Legislative Change: Guidelines on Process and Content*.
- All departmental officers involved with the development of the legislation are familiar with the relevant *Standing Orders of the House of Representatives*.
- Officials attending a select committee are familiar with: *Public Servants and Select Committees - Guidelines* (June 1996).
- The Audit Office *Guidelines on Costing and Charging for Public Sector Goods and Services* (1989) have been considered if cost recovery is involved.

Implementation and Review Stage

40. The final stage of the GPDP focuses on implementing the policy and reviewing its effect, and is illustrated in diagram 5.

41. The implementation phase of this stage is concerned with ensuring an agency has the appropriate structures, processes and resources in place to enable the legislation to become fully operational. The earlier stages of the GPDP will ensure that the costs of implementation offer no surprises and do not become an obstacle to implementing the legislation. This is because the costs of implementation would have been fully factored into the proposal's cost/benefit analysis.

42. The other major phase of this stage is reviewing the policy's impact. Generally review is necessary as circumstances may change over time leading to a previous effective policy becoming ineffective over time. As well policies can have unexpected consequences, even to the extent that they fail to alleviate the problem they sought to address. However, resource investment in review is not sensible in all instances. For example, it is not likely to be cost-effective to review initiatives that are purely mechanistic. The decision about whether and when to undertake a review is one for Chief Executives and Ministers in agreeing to the work programme. Decisions are also required as to the timing for a review to commence, relative to the commencement date of the new policy.

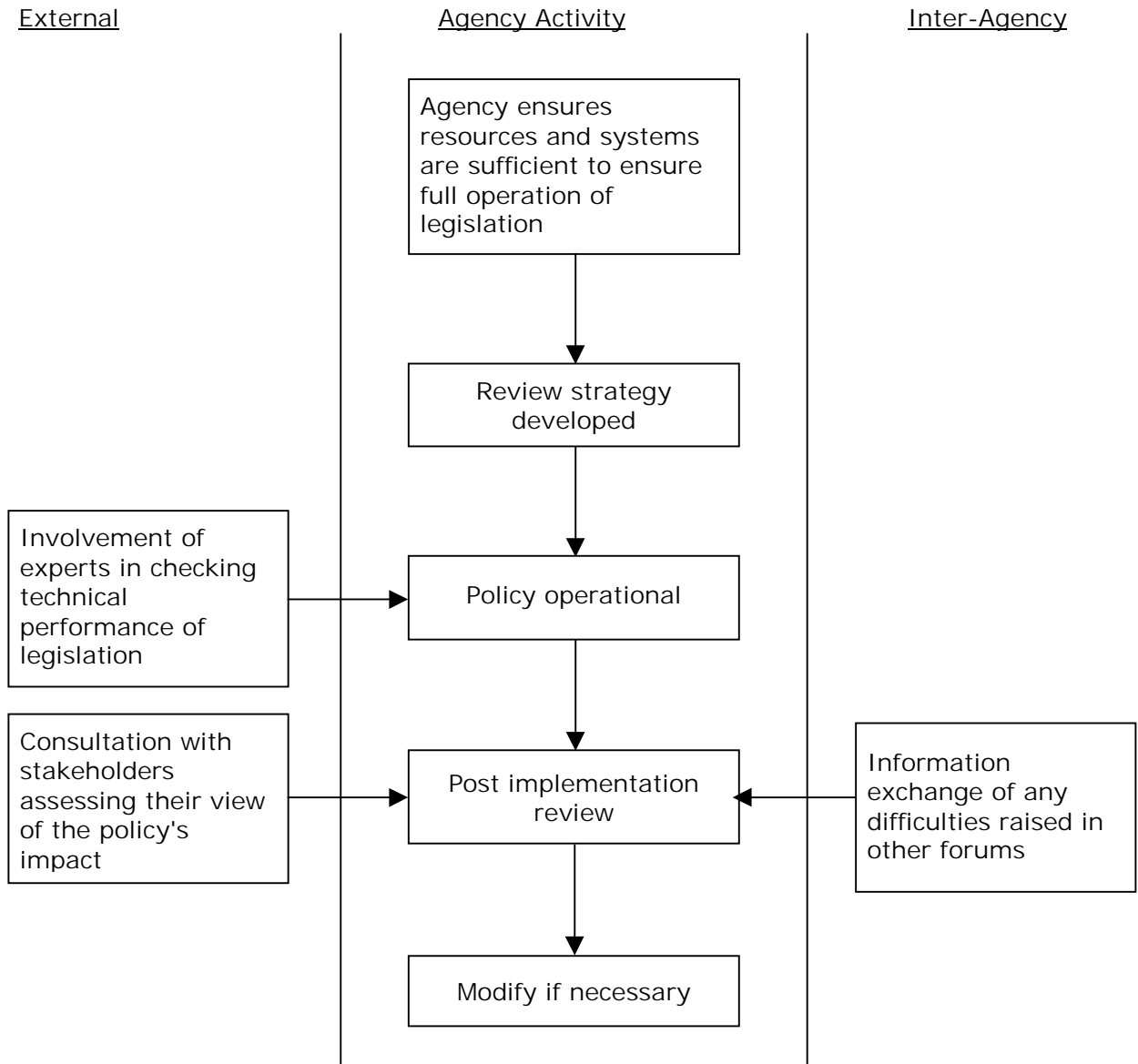
43. This stage of the GPDP emphasises the need for a review strategy that considers the types of information needed to assess the impact of the policy and whether the strategy needs to be in place at the time of implementation. For example to review the impact of an employment programme, information such as age, gender, ethnic group, level of qualifications, would be required from participants on entry to the programme. On exit information such as whether the participant will be engaged in education, training or employment over the coming six months would be essential to ascertain the merit of the employment programme. During the implementation stage, a questionnaire would need to be developed to collect such information and it would need to apply from day one of the programme.

44. At this stage the GPDP also focuses on external input to check both the technical performance of the regulation and the wider impact of the policy.

Checklist for the implementation and review stage

- The appropriate resources, systems and structures are in place to achieve implementation.
- A review strategy is in place that specifies the type of information required to assess the policy and when that information will be collected.
- External experts have been consulted on the likely technical performance of the legislation and any necessary technical amendments have been made.
- All technical issues with the legislation have been addressed.
- Monitoring and evaluation procedures are in place that consider whether:
 - the regulation is effective in achieving the policy objective;
 - the regulation is efficient;
 - there are any unintended effects.
- An appropriate level of consultation has occurred with stakeholders to help assess the impact of the policy

Diagram 5 - The Implementation and Review Stage of the GPDP



Appendix 1: Code of Good Regulatory Practice

EFFICIENCY

Adopt and maintain only regulations for which the costs on society are justified by the benefits to society, and that achieve objectives at lowest cost, taking into account alternative approaches to regulation.

Efficiency Guidelines

- *Consideration of alternatives to regulation:* regulatory design should include an identification and assessment of the most feasible regulatory and non-regulatory alternative(s) to addressing the problem.
- *Minimum necessary regulation:* when government intervention is desirable, regulatory measures should be the minimum required, and least distorting, in achieving desired outcomes.
- *Regulatory benefits outweigh costs:* in general, proposals with the greatest net benefit to society should be selected and implemented.
- *Reasonable compliance cost:* the compliance burden imposed on society by regulation should be reasonable and fair compared to the expected regulatory benefit.
- *Minimal fiscal impact:* regulators should develop regulatory measures in a way that minimises the financial impact of administration and enforcement.
- *Minimal adverse impact on competition:* regulation should be designed to have a minimal negative impact on competition.
- *International compatibility:* where appropriate, regulatory measures or standards should be compatible with relevant international or internationally accepted standards or practices, in order to maximise the benefits of trade.

EFFECTIVENESS

Regulation should be designed to achieve the desired policy outcome.

Effectiveness Guidelines

- *Reasonable compliance rate:* A regulation is neither efficient nor effective if it is not complied with or cannot be effectively enforced. Regulatory measures should contain compliance strategies which ensure the greatest degree of compliance at the lowest possible cost to all parties. Incentive effects should be made explicit in any regulatory proposal.
- *Compatibility with the general body of law,* including the statute which it amends, statutes which apply to it, and the general body of the law of statutory interpretation.
- *Compliance with basic principles* of our legal and constitutional system, including the Treaty of Waitangi, and with New Zealand's international obligations.

- *Flexibility of regulation and standards:* regulatory measures should be capable of revision to enable them to be adjusted and updated as circumstances change.
- *Performance-based requirements that specify outcomes* rather than inputs should be used, unless prescriptive requirements are unavoidable. This will help ensure predictability of regulatory outcomes and facilitate innovation.
- *Review regulations systematically* to ensure they continue to meet their intended objectives efficiently and effectively.

TRANSPARENCY

The regulation making process should be transparent to both the decision-makers and those affected by regulation.

Transparency Guidelines

- *Problem adequately defined:* identifying the nature and extent of the problem is a key step in the process of evaluating the need for government action. Properly done, problem definition will itself suggest potential solutions and eliminate others clearly not suitable.
- *Clear identification of the objective of regulation:* the policy goal should be clearly specified against the problem and have a clear link to government policy.
- *Cost benefit analysis:* regulatory proposals should be subject to a systematic review of the costs and benefit. Resources invested in cost benefit estimation should increase as the potential impact of the regulation increases.
- *Risk assessment:* regulatory proposals should be subject to a risk assessment which should be as detailed as is appropriate in the circumstances.
- *Public consultation* should occur as widely as possible, given the circumstances, in the policy development process. A well-designed and implemented consultation programme can contribute to better quality regulations, identification of the more effective alternatives, lower costs to business and administration, ensure better compliance, and promote faster regulatory responses to changing conditions.
- *Direct approaches to problem:* In general, adopting a direct approach aimed at the root cause of an identified problem will ensure that a more effective and efficient outcome is achieved, compared to an indirect response.

CLARITY

Regulatory processes and requirements should be as understandable and accessible as practicable.

Clarity Guidelines

- make things as simple as possible, but not simpler, in achieving the regulatory objective.

- Plain language drafting: where possible, regulatory instruments should be drafted in plain language to improve clarity and simplicity, reduce uncertainty, and to enable those affected to better understand the implications of regulatory measures.
- Discretion should be kept to a minimum, but be consistent with the need for the system to be fair. Good regulation should attempt to both minimise and standardise the exercise of bureaucratic discretion, in order to reduce discrepancies between government regulators, reduce uncertainty, and lower compliance costs.
- Educating the public as to their regulatory obligations is fundamental in ensuring compliance.

EQUITY

Regulation should be fair and treat those affected equitably.

Equity Guidelines

- *Obligations, standards, and sanctions* should be designed in such a way that they can be imposed impartially and consistently.
- *Regulation should be consistent with the principles* of the New Zealand Bill of Rights Act 1990, and the Human Rights Act 1993, and the expectations of those affected by regulation, as to their legal rights, should be met.
- *People in like situations should be treated in a similar manner*, similarly, people in disparate positions may be treated differently.
- *Reliance should be able to be placed on processes and procedures of the regulatory system*: a regulatory system is regarded as fair or equitable when individuals agree on the rules of that system, and any outcome of the system is considered just.